

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

RICHARD TODD HEINRICKS

Respondent.

NO. C-04-088-04-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO IMPOSE FINE, PROHIBIT
FROM INDUSTRY, ORDER RESTITUTION
AND COLLECT INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of April 15, 2004, the Director institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent: Richard Todd Heinrichs (Respondent) is known to have conducted the business of a mortgage broker, as owner of a sole proprietorship doing business as The Loan Connection Real Estate Services, at the following location:

8925 Emerald Park Dr.
Elk Grove, CA 95624

1.2 License: To date, Respondent has never applied for, or received, a license to conduct the business of a Mortgage Broker from the Department of Financial Institutions of the State of Washington (Department).

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1.3 Unlicensed Activity: Based on information contained in a final HUD-1 settlement statement for a residential mortgage loan on a residence located at 3923 NE Evans Lane, Moses Lake, Washington 98837 (the 3923 NE Evans Lane residence), "The Loan Connection" received a total of \$4,989.75 for the following:

- A. \$805.00 Loan Origination Fee
- B. \$400.00 Appraisal Fee
- C. \$13.50 Credit Report
- D. \$350.00 Broker Processing Fee
- E. \$3,421.25 Yield Spread Premium (POC)

Security Title Guaranty, Inc. (Security Title), located in Moses Lake, Washington, acted as the settlement agent for the loan. Security Title issued check number 18991, dated October 25, 2002, in the amount of \$4,989.75 to "The Loan Connection." According to Security Title, a package containing check number 18991, along with a cover letter indicating the check was for "Loan Origination Fees," was sent to "Richard Todd, The Loan Connection, 8925 Emerald Park Dr, Elk Grove, CA 95624" via Federal Express on October 25, 2002. On October 28, 2002, Federal Express's delivery of this package was confirmed by the signature "R. Todd." The check was endorsed with a pre-printed stamp "PAY TO THE ORDER OF RIVER CITY BANK FOR DEPOSIT ONLY THE LOAN CONNECTION" and deposited on or around October 28, 2002.

1.4 Failure to Pay a Third Party Service Provider: On January 16, 2003, the Department received a complaint from A-1 Appraisals (A-1), a third-party service provider located in Moses Lake, Washington, alleging Respondent failed to pay for an appraisal.

- A. A-1 provided a two-page faxed communication dated September 27, 2002. The fax cover sheet contains "The Loan Connection Real Estate Services" letterhead listing its location as 8925 Emerald Park Dr, Elk Grove, California 95624. The second page is a pre-printed form labeled "Appraisal Request Form" requesting an appraisal for "Richard Todd The Loan Connection" on the 3923 NE Evans Lane residence. The request form indicates the completed appraisal was to be delivered to The Loan Connection c/o Richard Todd, 8925 Emerald Park Dr, Elk Grove, CA 95624. The request form is signed by "Richard Todd."

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1 B. A-1 provided a copy of their letter, dated November 22, 2002, to The Loan Connection, 8925
2 Emerald Park Dr, Elk Grove, CA 95624, stating the appraisal on the 3923 NE Evans Lane
3 residence had been performed on October 4, 2002 and A-1 had not received payment in the
4 amount of \$400.00.

5 C. A-1 provided a copy of their letter, dated December 20, 2002, to The Loan Connection, 8925
6 Emerald Park Dr, Elk Grove, CA 95624, again stating that the appraisal had been performed
7 on the 3923 NE Evans Lane residence and payment had not been received.

8 As discussed in paragraph 1.3 above, a residential mortgage loan on the 3923 NE Evans Lane residence closed
9 on October 24, 2002 and Respondent received fees related to the origination of that loan on or around October
10 28, 2002. To date, A-1 alleges Respondent has failed to pay the appraisal fee.

11 **1.5 Failure to Maintain Funds From Borrower for Payment of Third-Party Providers in Trust:** As
12 discussed in paragraph 1.3 above, Respondent received fees related to the origination of a residential mortgage
13 loan on the 3923 NE Evans Lane residence, including \$400.00 for "Appraisal Fee," on or around October 28,
14 2002. These fees were deposited into Respondent's operating account at River City Bank in California, thereby
15 commingling trust funds with operating funds. When those trust funds were not available for their intended
16 purpose, they were effectively converted to a use other than originally intended.

17 **1.6 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by
18 Respondent continues to date.

19 **II. GROUNDS FOR ENTRY OF ORDER**

20 **2.1 Definition of Mortgage Broker:** Pursuant to RCW 19.146.010(12) and WAC 208-660-010(29),
21 "Mortgage Broker" means any person who, for compensation of gain, assists a person in obtaining or applying
22 to obtain a residential mortgage loan.

23 **2.2 Prohibited Acts:** Based on the Factual Allegations set forth in Section I above, Respondent is in
24 apparent violation of RCW 19.146.0201(1), (2) and (3) for directly or indirectly employing a scheme, device or
25

artifice to defraud or mislead borrowers, engaging in an unfair or deceptive practice toward any person, and obtaining property by fraud or misrepresentation.

2.3 Requirement to Obtain and Maintain License: Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200(1) for engaging in the business of a mortgage broker without first obtaining and maintaining a license under the Act.

2.4 Requirement to Pay Third-Party Service Providers: Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.0201(11) for failing to pay a third-party service provider no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service.

2.5 Requirement to Maintain Funds From Borrower for Payment of Third-Party Providers in Trust: Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.050, WAC 208-660-08010, WAC 208-660-08015, WAC 208-660-08020, WAC 208-660-08025, WAC 208-660-08030 and WAC 208-660-08032 for failing to deposit funds received from a borrower or on behalf of a borrower for payment of third-party provider services in a trust account of a federally insured financial institution located in this state, prior to the end of the third business day following receipt of such monies, for commingling operating funds with trust account funds, and for converting trust funds to a use other than originally intended.

2.6 Authority to Impose Fine: Pursuant to RCW 19.146.220(2)(c)(i) and WAC 208-660-165, the Director may impose fines on a licensee, employee or loan originator of the licensee, or other person subject to the Act for any violation of RCW 19.146.0201(1) through (9), RCW 19.146.050, or RCW 19.146.200.

2.7 Authority to Prohibit from the Industry: Pursuant to RCW 19.146.220(2)(e)(i), the Director may prohibit from participation in the conduct of the affairs of a licensed mortgage broker, any officer, principal,

employee, or loan originator of any licensed mortgage broker or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9), RCW 19.146.050, or RCW 19.146.200.

2.8 Authority to Order Restitution: Pursuant to RCW 19.146.220(d)(ii), the Director may issue orders directing a licensee, its employee or loan originator, or other person subject to the Act to pay restitution to an injured borrower.

2.9 Authority to Charge Investigation Fee: Pursuant to RCW 19.146.228(2), WAC 208-660-060(4) and WAC 208-660-061, upon completion of any investigation of the books and records of a licensee or other person subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of forty-seven dollars and seventy-eight cents (\$47.78) per hour that each staff person devoted to the investigation.

III. NOTICE OF INTENTION TO ENTER ORDER

Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth in the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the Director's intention to ORDER that:

- 3.1 Respondent Richard Todd Heinrichs pay a fine of \$9,000.00 for:
 - a. Violating RCW 19.146.0201(1), (2) and (3), calculated at \$100 per day for 30 days; and
 - b. Violating RCW 19.146.050, calculated at \$100 per day for 30 days; and
 - c. Violating RCW 19.146.200, calculated at \$100 per day for 30 days.
- 3.2 Respondent Richard Todd Heinrichs be prohibited from participation in the conduct of the affairs of any licensed mortgage broker, in any manner, for a period of ten (10) years;
- 3.3 Respondent Richard Todd Heinrichs pay \$4,989.75 in restitution to Kathryn M. Rawley (the injured borrower) for loan fees paid for a loan originated without a license; and
- 3.4 Respondent Richard Todd Heinrichs pay an investigation fee in the amount of \$621.14 calculated at \$47.78 per hour for thirteen (13) staff hours devoted to the investigation; and
- 3.5 Respondent Richard Todd Heinrichs maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent Richard Todd Heinrichs's mortgage broker business, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

1 **IV. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Impose Fine, Prohibit from Industry,
3 Order Restitution and Collect Investigation Fee is entered pursuant to the provisions of RCW 19.146.220,
4 RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05
5 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in
6 the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
7 Statement of Charges and Notice of Intention to Enter an Order to Impose Fine, Prohibit from Industry, Order
8 Restitution and Collect Investigation Fee.

9 Dated this 15th day of April, 2004.

11 /s/

12 **CHUCK CROSS**
13 Acting Director and Enforcement Chief
14 Division of Consumer Services
15 Department of Financial Institutions

16 Presented by:

17 _____
18 Mark T. Olson
19 Financial Examiner
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1 **RCW 19.146.010 Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

2 ...
(12) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain
(a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or
(b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying
3 to obtain a residential mortgage loan.
4 ...

5 [1997 c 106 § 1; 1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

6 **RCW 19.146.0201 Loan originator, mortgage broker -- Prohibitions -- Requirements.**

It is a violation of this chapter for a loan originator, mortgage broker required to be licensed under this chapter, or
mortgage broker otherwise exempted from this chapter under RCW [19.146.020](#)(1) (d) or (f) in connection with a
7 residential mortgage loan to:

8 (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud
any person;

9 (2) Engage in any unfair or deceptive practice toward any person;

10 (3) Obtain property by fraud or misrepresentation;

11 ...
(11) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety
days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party
service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the
third-party service;
12 ...

13 [1997 c 106 § 3; 1994 c 33 § 6; 1993 c 468 § 4.]

14 **RCW 19.146.050 Moneys for third-party provider services deemed in trust -- Deposit of moneys in trust account --
Use of trust account -- Rules -- Tax treatment.**

15 All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed
as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the
16 third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured
financial institution located in this state. All trust account funds collected under this chapter must remain on deposit in a
trust account in the state of Washington until disbursement. The trust account shall be designated and maintained for the
17 benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment.
A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds
with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered
18 by a third-party provider or for refunds to borrowers. The director shall make rules which: (1) Direct mortgage brokers
how to handle checks and other instruments that are received by the broker and that combine trust funds with other funds;
19 and (2) permit transfer of trust funds out of the trust account for payment of other costs only when necessary and only with
the prior express written permission of the borrower. Any interest earned on the trust account shall be refunded or credited
20 to the borrowers at closing. Trust accounts that are operated in a manner consistent with this section and any rules adopted
by the director, are not considered gross receipts taxable under chapter 82.04 RCW.

21 [1998 c 311 § 1; 1997 c 106 § 5; 1987 c 391 § 7.]

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RCW 19.146.200 License -- Required -- Independent contractor -- Suit or action as mortgage broker -- Display of license.

(1) A person may not engage in the business of a mortgage broker, except as an employee of a person licensed or exempt from licensing, without first obtaining and maintaining a license under this chapter. However, a person who independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the independent contractor have on file with the director a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage broker's bond or other security required under this chapter runs to the benefit of the state and any person who suffers loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted under this chapter.

(2) A person may not bring a suit or action for the collection of compensation as a mortgage broker unless the plaintiff alleges and proves that he or she was a duly licensed mortgage broker, or exempt from the license requirement of this chapter, at the time of offering to perform or performing any such an act or service regulated by this chapter. This subsection does not apply to suits or actions for the collection or compensation for services performed prior to October 31, 1993.

(3) The license must be prominently displayed in the mortgage broker's place of business.

[1997 c 106 § 8; 1994 c 33 § 7; 1993 c 468 § 5.]

RCW 19.146.220 Director -- Powers and duties -- Violations as separate violations -- Rules.

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.060(3), 19.146.0201 (1) through (9) or (12), 19.146.205(4), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

(d) Issue orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:

(i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter; or

(ii) Pay restitution to an injured borrower; or

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (12), 19.146.030 through 19.146.080, 19.146.200, 19.146.205(4), or 19.146.265; or

(ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(5) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

[1997 c 106 § 12; 1997 c 58 § 879; 1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

RCW 19.146.221 Action by director -- Hearing -- Sanction.

The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

[1994 c 33 § 13.]

RCW 19.146.223 Director -- Administration and interpretation.

The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005.

[1994 c 33 § 2.]

RCW 19.146.228 Fees -- Rules -- Exception.

The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule;
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and
- (3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker provides a remedy satisfactory to the

complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account.

[2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

RCW 19.146.230 Administrative procedure act application.

The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW.

[1994 c 33 § 16; 1993 c 468 § 10.]

RCW 19.146.235 Director -- Investigation powers -- Duties of person subject to examination or investigation.

For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons.

The director or designated person may direct or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry. If a person who receives such a directive or order does not attend and testify, or does not produce the requested books, records, files, or other documents within the time period established in the directive or order, then the director or designated person may issue a subpoena requiring attendance or compelling production of books, records, files, or other documents. No person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or places of business to conduct a compliance examination. The director may examine, either personally or by designee, a sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter. For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the director or a designee may visit the licensee's place or places of business only to ensure that corrective action has been taken or to investigate a complaint.

[1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

1 **WAC 208-660-010 Definitions.**

As used in this chapter, the following definitions apply, unless the context otherwise requires:

- 2 ...
- (29) "Mortgage broker" means any person that for compensation or gain, or in the expectation of compensation or gain:
- Makes a residential mortgage loan or assists a person in obtaining a residential mortgage loan; or
 - Holds himself or herself out as being able to do so.
- 3 ...

4 [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-010, filed 5/29/01, effective 7/1/01. Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-010, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-010, filed 6/21/95, effective 7/22/95. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-010, filed 1/7/94, effective 2/7/94.]

7 **WAC 208-660-060 Department's fees and assessments.**

(1) Upon completion of processing and reviewing an application for a license or branch office certificate, the department will prepare a billing, regardless of whether a license or certificate has been issued, calculated at the rate of \$35.98 per hour that each staff person devoted to processing and reviewing the application. The application deposit will be applied against this bill. Any amount left owing to the department will be billed to and paid promptly by the applicant, while any balance remaining from the deposit will be refunded promptly to the applicant.

10 (2) Upon completion of any examination of the books and records of a licensee, the department will furnish to the licensee a billing to cover the cost of the examination. The examination charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the examination. The examination billing will be paid by the licensee promptly upon receipt. Licensees that were issued licenses prior to March 21, 1994, have prepaid in their initial license fee the cost of the first compliance examination of the licensee conducted by the department during the first two years after the date of issuance of the license.

13 (3) Each licensee shall pay to the director an annual assessment of \$513.95 for each license, and \$513.95 for each branch office certificate. The annual assessment(s) will be due no later than the last business day of the month in which the anniversary date of the issuance of the broker's license occurs.

14 (4) Upon completion of any investigation of the books and records of a mortgage broker other than a licensee, the department will furnish to the broker a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of \$46.26 per hour that each staff person devoted to the investigation. The investigation billing will be paid by the mortgage broker promptly upon receipt.

17 [Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-060, filed 5/29/01, effective 7/1/01; 96-04-028, recodified as § 208-660-060, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-060, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-060, filed 11/8/94, effective 12/9/94. Statutory Authority: 1993 c 468 § 9. 94-03-009, § 50-60-060, filed 1/7/94, effective 2/7/94.]

19 **WAC 208-660-061 Fee increase.**

20 The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.

21 (1) On July 1, 2002, the fee and assessment rates under WAC 208-660-060, as increased in the prior fiscal year, will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

23 (2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

(3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.

[Statutory Authority: RCW 18.44.410, 19.146.223, 19.146.225, 19.146.265, 31.04.165, 31.45.200. 01-12-029, § 208-660-061, filed 5/29/01, effective 7/1/01.]

WAC 208-660-08010 Establishment of trust account for borrower funds to pay third-party providers.

Each mortgage broker shall as trustee hold all funds received from borrowers for payment to third-party providers. The funds may not be used for the benefit of the mortgage broker or any person not entitled to such benefit, except as may be expressly permitted by the Mortgage Broker Practices Act. Each mortgage broker shall establish a trust account(s) for the funds in a financial institution's branch located in this state. Each mortgage broker is responsible for depositing, holding, disbursing, accounting for, and otherwise dealing with the funds, in accordance with the act.

[96-04-028, recodified as 208-660-08010, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08010, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08015 Designation of trust account(s).

Each account holding borrower funds to pay third-party providers must be designated as a trust account in the name of the mortgage broker as it appears on its license, or if exempt from licensing, in the name of the exempt broker. All checks must be prenumbered by the supplier (printer), unless the licensee uses an automated check writing system, in which case all checks must be numbered in sequence, and bear upon the front of the check the identifying words, "trust account." Any interest earned on a borrower's subaccount shall be refunded or credited to the borrower either at closing or upon withdrawal or denial of the borrower's loan application.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08015, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-08015, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08015, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08020 Required trust account records and procedures.

Each mortgage broker shall establish and maintain a system of records and procedures for trust accounts as provided in the Mortgage Broker Practices Act. Any alternative records or procedures proposed for use by the mortgage broker shall be approved in advance by the director or his or her designee.

Each mortgage broker shall maintain as part of its books and records:

(1) A trust account deposit register and copies of all validated deposit slips or signed deposit receipts for each deposit to the trust account;

(2) A ledger for each trust account. Each ledger must contain a separate subaccount ledger sheet for each borrower from whom funds are received for payment of third-party providers. Each receipt and disbursement pertaining to such funds must be posted to the ledger sheet at the time the receipt or disbursement occurs. Entries to each ledger sheet must show the date of deposit, identifying check or instrument number, amount and name of remitter. Offsetting entries to each ledger sheet must show the date of check, check number, amount of check, name of payee and invoice number if any. Canceled or closed ledger sheets must be identified by time period and borrower name or loan number;

(3) A trust account check register consisting of a record of all deposits to and disbursements from the trust account;

(4) Reconciled trust account bank statements;

(5) A monthly trial balance of the ledger of trust accounts, and a reconciliation of the ledger of trust accounts with the related bank statement(s) and the related check register(s).

The reconciled balance of the trust account(s) must at all times equal the sum of:

(a) The outstanding amount of funds received from borrowers for payment of third-party providers; and

(b) The outstanding amount of any deposits into the trust fund of the mortgage broker's own funds in accordance with

WAC 50-60-08025(4).

(6) A printed and dated source document file to support any changes to existing accounting records.

[96-04-028, recodified as § 208-660-08020, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08020, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08025 Trust account deposit requirements.

(1) All funds received from borrowers or on behalf of borrowers for the payment of third-party providers, whether specifically identified as such or not, and regardless of when they are received, must be deposited in the trust account(s) prior to the end of the third business day following receipt. In order to satisfy this requirement in regard to the deposit of a check or money order, the mortgage broker must within one business day after receipt of the check or money order:

(a) Endorse the check or money order "for deposit only" with the broker's trust account number and mail the check postage prepaid to its financial institution; or

(b) Endorse the check or money order "for deposit only" with the mortgage broker's trust account deposit number and by the end of the next business day mail the check or money order postage prepaid to the main office of the broker. The main office shall, in turn, deposit the check or money order in its financial institution prior to the end of the third business day after receipt of the check or money order in the main office; or

(c) Deposit the check or money order into its trust account by depositing it directly at the branch where its trust account is held or at an ATM of its financial institution.

(2) All deposits to the trust account(s) must be documented by a bank deposit slip which has been validated by bank imprint, or by an attached deposit receipt which bears the signature of an authorized representative of the mortgage broker indicating that the funds were actually deposited into the proper account(s).

(3) Receipt of funds by wire transfer or any means other than cash, check, or money order, must be posted in the same manner as other receipts. Any such transfer of funds must include a traceable identifying name or number supplied by the financial institution or transferring entity. The mortgage broker must also retain a receipt for the deposit of the funds which must contain the traceable identifying name or number supplied by the financial institution or transferring entity.

(4) Deposits to the trust account(s) must be limited to funds delivered to the mortgage broker for payment to third-party providers, except a mortgage broker may deposit its own funds into the trust account(s) to prevent a disbursement in excess of an individual borrower's subaccount, provided that the exact sum of deficiency is deposited and detailed records of the deposit and its purpose are maintained in the trust ledger and the trust account(s) check register. Any deposits of the mortgage broker's own funds into the trust account(s) must be held in trust in the same manner as funds paid by borrowers for the payment of third-party providers and treated accordingly in compliance with the Mortgage Broker Practices Act.

If a mortgage broker has deposited its own funds into its trust account, the mortgage broker may receive reimbursement for such deposit at closing into its general business bank account provided:

(a) All third-party provider's charges associated with the mortgage broker's deposit have been paid;

(b) The HUD 1 Settlement Statement provided to the borrower clearly reflects the line item, "deposit paid by broker," and the amount deposited;

(c) The HUD 1 Settlement Statement provided to the borrower clearly reflects the line item, "reimbursement to broker for funds advances," and the amount reimbursed; and

(d) Any funds disbursed by escrow at closing to the mortgage broker for payment of unpaid third-party providers' expenses charged or to be charged to the mortgage broker are deposited into the borrower's subaccount of the mortgage broker's trust account.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08025, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-08025, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08025, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08030 Trust account disbursement requirements.

(1) Each mortgage broker is responsible for the disbursement of all trust account funds, whether disbursed by personal signature, signature plate, or signature of another person authorized to act on the mortgage broker's behalf.

(2) All disbursements of trust funds must be made by check, drawn on the trust account, and identified on the check as pertaining to a specific third-party provider transaction or borrower refund, except as specified in this section. The number of each check, amount, date, and payee must be shown in the trust account(s) check ledger as written on the check.

(3) Disbursements may be made from the trust account(s) for the payment of bona fide third-party providers' services rendered in the course of the borrower's loan origination, if the borrower has consented in writing to the payment. Such consent may be given at any time during the application process and in any written form, provided that it contains sufficient detail to verify the borrower's consent to the use of trust funds. No disbursement on behalf of the borrower may be made from the trust account until the borrower's or broker's deposit of sufficient funds into the trust account(s) is available for withdrawal.

(4) If a borrower has more than one loan application pending with a mortgage broker, the mortgage broker shall maintain a separate subaccount ledger for each loan application. The borrower must consent to any transfer of trust account funds between the individual subaccounts associated with these pending loan applications. The consent must be maintained in the borrower's loan file and referenced in the borrower's subaccount ledger sheets.

(5) Among other prohibited disbursements, no disbursement may be made from a borrower's subaccount:

(a) In excess of the amount held in the borrower's subaccount (commonly referred to as a disbursement in excess);

(b) In payment of a fee owed to any employee of the mortgage broker or in payment of any business expense of the mortgage broker;

(c) For payment of any service charges related to the management or administration of the trust account(s);

(d) For payment of any fees owed to the mortgage broker by the borrower, or to transfer funds from the subaccount to any other account; and

(e) For the payment of fees owed to the broker under RCW 19.146.070 (2)(a).

(6) A mortgage broker may, in the case of a closed and funded transaction, transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's general business bank account in full or partial payment of fees owed to the mortgage broker upon determination that all third-party providers' expenses have been accurately reported in the loan closing documents and have been paid in full, and that the borrower has received credit in the loan closing documents for all funds deposited in the trust account.

Each mortgage broker shall maintain a detailed audit trail for any disbursements from the borrower's subaccount(s) into the mortgage broker's general business bank account, including documentation in the form of a final HUD-1 Settlement Statement form showing that credit has been received by the borrower in the closing and funding of the transaction. The disbursements must be made by a check drawn on the trust account and deposited directly into the mortgage broker's general business bank account.

(7) Borrower funds held by the mortgage broker must be remitted to the borrower within five business days of the determination that all payments to third-party providers owed by the borrower have been satisfied.

(8) Any trust funds held by the mortgage broker for a borrower who cannot be located must be remitted in compliance with the Uniform Unclaimed Property Act of 1983, chapter 63.29 RCW.

[Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08030, filed 12/8/00, effective 1/8/01; 96-04-028, recodified as § 208-660-08030, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091, § 50-60-08030, filed 6/21/95, effective 7/22/95.]

WAC 208-660-08032 Approved methods of disbursement to and from trust accounts.

A mortgage broker who receives a check from closing which includes both the mortgage broker's fee and a payment or payments for third party service providers is required to disburse to and from trust accounts in accordance with WAC 208-660-08010 through 208-660-08030. The approved methods for accomplishing this, and avoiding violation of RCW 19.46.050, are:

(1) The mortgage broker at the time of deposit is to split the check at the teller window and route any moneys due to third party service providers to an approved trust account, and moneys due the mortgage broker to its general account; or

1 (2) The mortgage broker deposits the entire check into the trust account. After paying any and all moneys due to third
2 party service providers and seeing to it that the borrower has received credit for all funds deposited in the trust account, the
3 mortgage broker may transfer excess funds remaining in the individual borrower's subaccount into the mortgage broker's
4 general business bank account. This amount must be equal to the fee disclosed on the final HUD-1 Settlement Statement,
5 less any amounts already received by the mortgage broker, and must be duly recorded in the trust subaccount ledger. The
6 mortgage broker may at no time before the loan is closed transfer moneys from a trust account to their general business
7 bank account.

8 [Statutory Authority: RCW 43.320.010, 19.146.223. 01-01-044, § 208-660-08032, filed 12/8/00, effective 1/8/01.]

9 **WAC 208-660-165 Fines and penalties for violation of the Mortgage Broker Practices Act.**

10 Each mortgage broker and each of its principals, designated brokers, officers, employees, independent contractors, and
11 agents shall comply with the applicable provisions of the Mortgage Broker Practices Act. Each violation of any applicable
12 provision of the Mortgage Broker Practices Act, or of any order, directive, or requirement of the director may, at the
13 discretion of the director, subject the violator to a fine of up to one hundred dollars for each offense. Each day's
14 continuance of the violation is a separate and distinct offense. In addition, the director in his or her discretion may by order
15 assess other penalties for a violation of the Mortgage Broker Practices Act.

16 [96-04-028, recodified as § 208-660-165, filed 2/1/96, effective 4/1/96. Statutory Authority: RCW 19.146.225. 95-13-091,
17 § 50-60-165, filed 6/21/95, effective 7/22/95; 94-23-033, § 50-60-165, filed 11/8/94, effective 12/9/94.]